

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.38739 of 2016 & W.M.P.No.33191 of 2016

1. KMCH College of Pharmacy,
Rep. by Managing Trustee,
Kovai Medical Center Research &
Educational Trust,
No.940/1 A & B, Kovai Estate,
Kalapatti Road, Coimbatore-641 048.
2. KMCH college of Nursing,
Rep. by Managing Trustee,
Kovai Medical Center Research &
Educational Trust,
No.940/1 A & B, Kovai Estate,
Kalapatti Road, Coimbatore-641 048.
3. KMCH College of Physiotherapy,
Rep. by Managing Trustee,
Kovai Medical Center Research &
Educational Trust,
No.940/1 A & B, Kovai Estate,
Kalapatti Road, Coimbatore-641 048.
4. KMCH College of Occupational Therapy,
Rep. by Managing Trustee,
Kovai Medical Center Research &
Educational Trust,
No.940/1 A & B, Kovai Estate,
Kalapatti Road, Coimbatore-641 048.
5. The NGP School, Rep. by its
Correspondent & Managing Trustee,
Kovai Medical Center Research & Educational Trust,
No.940/1 A & B, Kovai Estate,
Kalapatti Road, Coimbatore-641 048.
6. The NGP Teacher Training Institute,
Rep. by its Correspondent & Managing Trustee,
Kovai Medical Center Research &
Educational Trust,
No.940/1 A & B, Kovai Estate,
Kalapatti Road, Coimbatore-641 048.

... Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Labour and Employment (K1) Department,
Fort St. George, Chennai-600 009.
2. The Employees State Insurance Corporation,
Rep. by its Deputy Director of ESIC (INS-IV),
1897, Trichy Road, Pradeep Bhavan,
Ramanathapuram, Coimbatore-641 045.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the coverage of ESI to the petitioners pursuant to the Notification extending Employees' State Insurance Scheme to private Educational Institutions in all the implemented area under Employees State Insurance Act by G.O.Ms.No.237, Labour and Employment (K1) on 26th November 2010 published the vide Tamil Nadu Government Gazette in Part-II-Section 2 dated 29.12.2010 and Government vide Labour and Employment Department Notification No.II(2) LE/265/2008 published at page 206 of Part-II Section 2 of the Tamil Nadu Government Gazette, dated 4th June 2008 as "Null & Void" and hold the consequent letters of Second respondent dated 14.09.2016 vide No.56561107190031305/Ins IV & 56561107190011399/Ins IV, received by the petitioners on 19.09.2016, of the second respondent informing and treating all the Educational Institutions of the Kovai Medical Center Research and Educational Trust as single entity and stating they are covered under Employees State Insurance Act, and calling upon it to suddenly deposit contribution from period 12/10 (i.e. 12/2010), under Employees State Insurance Act, as non-est in law, in so far as they relate to the petitioners institutions.

For Petitioners : Mr.K.Shakespeare

For Respondents : Mr.R.S.Selvam, R1
Government Advocate

Mrs.S.Jayakumari for R2

O R D E R

The relief sought for in this writ petition is declaring the coverage of ESI to the petitioners pursuant to the Notification extending Employees' State Insurance Scheme to private Educational Institutions in all the implemented area under Employees State Insurance Act by G.O.Ms.No.237, Labour and

Employment (K1) on 26th November 2010 published the vide Tamil Nadu Government Gazette in Part-II-Section 2 dated 29.12.2010 and Government vide Labour and Employment Department Notification No.II(2)LE/265/2008 published at page 206 of Part-II Section 2 of the Tamil Nadu Government Gazette, dated 4th June 2008 as "Null & Void" and hold the consequent letters of Second respondent dated 14.09.2016 vide No.56561107190031305/Ins IV & 56561107190011399/Ins IV, received by the petitioners on 19.09.2016, of the second respondent informing and treating all the Educational Institutions of the Kovai Medical Center Research and Educational Trust as single entity and stating they are covered under Employees State Insurance Act, and calling upon it to suddenly deposit contribution from period 12/10 (i.e. 12/2010), under Employees State Insurance Act,

2.The Hon'ble Supreme Court of India dismissed a batch of cases filed in SLP(C) No.28285 of 2009 etc., dated 15th March, 2016. By following the orders of the Hon'ble Supreme Court of India, this Court passed final orders on 20th March, 2017 in Writ petition No.42247 of 2016 as hereunder:

"The only challenge sought to be made in this writ petition is to the coverage of employee state insurance qua the private educational institution.

2.When the matter is taken up for hearing, learned counsel appearing for respondents 2 and 3 submits that the issue has been dealt with finally by the Apex Court in a batch of cases in SLP No.28285 of 2009 etc., and by order dated 15.03.2016, it has been held that private educational institutions are also bound to pay the employee state insurance contribution.

3.In such view of the matter, the writ petition stands dismissed. However, taking into consideration the pendency of the writ petition and the difficulties expressed by the petitioner, the arrears of ESI contribution as on today is ordered to be paid by the petitioner in 12 equal monthly instalments. It is made clear that the order would cover the past arrears till the month of March, 2017 and thus from the month of April, 2017, the petitioner is bound to pay the ESI contribution on regular basis. No costs. Consequently, connected miscellaneous petitions are closed."

3.In view of the above orders passed by this Court, this writ petition is dismissed. However, there shall be no orders as to costs. Consequently, the connected miscellaneous petition is closed.

28.08.2017

BEING MENTIONED

This Petition is coming on for Being Mentioned as Wednesday the Twentieth day of December 2017 pursuant to the order dated 28/08/2017 and made herein in the presence of the aforesaid. Counsels on the either side the Court made the following order:

This matter came up for hearing today under the caption 'For Being Mentioned' at the instance of the learned counsel appearing on behalf of the petitioner.

2.The learned counsel appearing on behalf of the petitioner submits that in the final order passed by this Court on 28.08.2017 in W.P.No.38739 of 2016, in the third paragraph of the fifth page, it has been mentioned as "In view of the above orders passed by this Court, this writ petition is dismissed. However, there shall be no orders as to costs. Consequently, the connected miscellaneous petition is closed.", and prays that the same may be modified in the order.

3.Heard Mrs.S.Jayakumari, learned counsel for the second respondent submits that the order may be modified.

4.Accordingly, the third paragraph of the order dated 28.08.2017 in the above Writ Petition shall be read as follows:

"3.In view of the above orders passed, the writ petitioner is permitted to pay the arrears of ESI contribution in twelve equal installments from 1st January, 2018. This apart, the petitioner is bound to pay the ESI contribution on regular basis, in accordance with the Act and Rules.

4.Accordingly, the writ petition stands dismissed. However, there is no order as to cost. Consequently, the connected miscellaneous petition is closed."

4.Registry is directed to issue the fresh order copy after incorporating the necessary corrections in the above said order dated 28.08.2017.

Sd/-
Assistant Registrar(CSII)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Principal Secretary,
The Government of Tamil Nadu,
Labour and Employment (K1) Department,
Fort St. George, Chennai-600 009.
2. The Deputy Director of ESIC (INS-IV),
Employees State Insurance Corporation,
1897, Trichy Road, Pradeep Bhavan,
Ramanathapuram, Coimbatore-641 045.

+1cc to Mr.K.Shakespeare, Advocate, S.R.No.*90986

+1cc to the Government Pleader, S.R.No.62324

+1 cc to Ms.S.Jayakumari Advocate sr 91009

W.P.No.38739 of 2016

NRJK (CO)
CA (05/10/2017)
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